



JENKINS & KLING, P.C.
ATTORNEYS AT LAW

Stephen L. Kling, Jr.
Email skling@jenkinskling.com

Admitted to Practice in
Missouri

October 6, 2016

Via Hand Delivery

Board of Adjustment
City of Kirkwood
139 South Kirkwood Road
Kirkwood, Missouri 63122

RE: *Request for Variance*

Dear Board of Adjustment Members:

On behalf of Vianney, I am delivering for filing the enclosed variance application related to Vianney's sports field lighting. Our firm check in the amount of \$500.00 for the non-refundable filing fee is enclosed. In connection with this application, please also find the following enclosures:

- Twelve (12) copies of Vianney's hardship letter;
- Twelve (12) copies of the sports field site plan;
- Twelve (12) copies of an ALTA/ACSM land title survey;
- Twelve (12) copies of the lighting plan submitted to the City on or about early October 2015;
- Twelve (12) copies of an existing survey lighting exhibit; and
- Twelve (12) copies of a photometric plan relating to the sports field lighting.

Please note that Vianney filed a precautionary appeal on or about March 11, 2016 regarding the determination of Mr. William Bensing that Vianney's ballfield lights and audio system could not be used. At that time, Vianney requested that the City temporarily delay a hearing until Vianney made a decision to file a new variance request so that the March 11, 2016 appeal could be heard at the same time. Please be advised that Vianney will be filing a new appeal of the September 7, 2016 conditional approval of the City of Kirkwood Planning and Zoning Commission regarding to Vianney's sports field cite plan simultaneously with this variance application.

EXHIBIT "12"

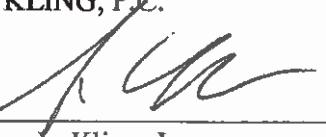
Board of Adjustment
City of Kirkwood
October 6, 2016
Page 2

Please contact me if you have any questions.

Sincerely,

JENKINS & KLING, P.C.

By:


Stephen L. Kling, Jr.

SLK/ee
Enclosures

cc: Mr. Michael Loyet (via email)
John M. Hessel, Esq. (via email)

VVVVVV

Electronically Filed - St Louis County - January 03, 2017 - 05:13 PM

DATE : Oct/ 5/2016
 CHE # : 39586
 AMOUNT : \$500.00
 ACCOUNT: GENERAL - 1
 PAID TO: City of Kirkwood

City of Kirkwood - Variance Fee

CLIENT: 3654 - Vianney High School
 MATTER: 3654-001

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

JENKINS & KLING, P.C.
 150 NORTH MERAMEC AVENUE, SUITE 400
 ST. LOUIS, MO 63106
 PH: (314) 721-2625

FIRST BANK
 135 N. MERAMEC
 CLAYTON, MISSOURI 63105

80-942/810

39586
39586

Five Hundred ***** 00/100

DATE	AMOUNT
Oct/ 5/2016	\$500.00

City of Kirkwood

PAY
 TO THE
 ORDER
 OF

TWO SIGNATURES REQUIRED OVER \$500.00

City of Kirkwood - Variance Fee



SECURITY FEATURES INCLUDED. DETAILS ON BACK.

039586 10810094281 9821909352



Board of Adjustment Variance Application

(VARIANCE)

***A pre-submittal meeting is required; please call (314) 984-6943 to schedule.**

An appointment with staff is required prior to the submittal of a variance application. Your meeting with staff will assist you in preparing your submittal information and help to prevent delays in the process and review of your application by the Board of Adjustment. Please contact TaMara Pelkey, Building Secretary to schedule an appointment at 314-984-6943.

Project Address: 1311 S. Kirkwood Rd. Zoning District: R-3 Residential Case # _____

Type of Work: New Construction Addition Other Baseball field renovation

Type of Structure: Single-family Multi-family Commercial Other Baseball field lighting/light standards

Has a previous variance application been filed on these premises within the last three (3) years? Yes No

*If yes, provide available information that may affect this application. Variance dated June 19, 2015 (voided); Appeal dated March 11, 2016; Appeal dated and filed of even date herewith

I hereby certify that all the information provided, and that contained in any supporting documents submitted, are true and accurate to the best of my knowledge and belief.

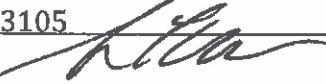
Applicant Information

Property Owner Occupant Contractor Architect Other Attorney

Name: Stephen L. Kling, Jr., Esq. Phone (314) 721-2525

Address: 150 N. Meramec Avenue, Suite 400

City/State/Zip St. Louis, MO 63105 E-mail skling@jenkinskling.com

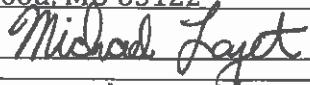
Applicants Signature:  Date October 6, 2016

Property Owner Information (if different from above)

Name: Marianist Province of the United States (Vianney—leasehold owner pursuant to long-term lease)

Address: 1131 S. Kirkwood Rd. Phone (314) 965-4853; ext. 112

City/State/Zip Kirkwood, MO 63122 E-mail mloyet@vianney.com

Owner's Signature:  Date October 6, 2016

The following documents must be submitted with the completed application:

- Twelve (12) copies of a Sealed Missouri Minimum Standards Boundary Survey (see reverse for specifications)
- Twelve (12) copies of photographs that show the property requesting variance
- Twelve (12) copies of elevation plans for side and rear variances
- Twelve (12) copies of additional drawings that clearly present the facts relating to this appeal
- One (1) copy of a hardship letter (see reverse for specifications) (SEE ATTACHED)
- A \$240 non-refundable filing fee for additions, alterations to existing single-family and accessory structures to existing single-family residences such as shed, garages, and swimming pools
- A \$500 non-refundable filing fee for all others not listed above,
- A \$50 fee for each additional variance request on the same application.

Pursuant to the provisions of Ordinance No. 10103, application is hereby made to vary or modify the order, requirement, decision or ruling of the Building Commissioner or to vary or modify the application of the regulations or provisions of the Zoning Code of the City of Kirkwood, Missouri.

The required documents have been reviewed and approved for submittal to apply for a variance from the Board of Adjustment.

Received by: _____ Date: _____

139 S. Kirkwood Rd. Kirkwood, MO 63122 (314) 984-6943 Fax (314) 822-5898

General Information

1. Board of Adjustment members are an appointed group of volunteer citizens.
2. Site visits will be made by the board members prior to the meeting date.
3. Your street address should be visible on the front of the home.
4. Please do not staple together information that you submit, or attempt to assemble in "packet" form.
5. Board of Adjustment hearings are generally held on the second Monday of the month, and at such other times as the board may determine necessary.
6. All information must be submitted twenty-four (24) calendar days prior to the hearing date.
7. The agenda for the board will only accommodate six (6) cases per hearing date.
8. Variance requests are reviewed and determined at the scheduled hearing date. Applicants are required to present their cases and answer questions from board members. The Board reserves the right to table applications pending submittal of additional information. All decisions are final and CAN NOT be re-heard. Variances denied may be appealed in circuit court.

Hardship Letter Information (The following information must be contained in the hardship letter):

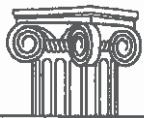
1. A description of the intended addition or improvement including description of location/distance from property lines.
2. Written description of setbacks which will be violated, the variance requested, and the section from the Zoning Code.
3. Written description of the practical difficulties or unnecessary hardships which will occur if the strict letter of the Zoning Code is applied.

Survey Information (The survey must contain the following):

1. Property lines and property dimensions
2. Location, size and shape of any structures presently on the site
3. Location, size and shape of any proposed structures
4. Dimensions showing front, side and rear yard setbacks
5. Dimensions showing distance of structures and proposed structures from property lines
6. If you are requesting a front yard variance for an interior lot located between two (2) improved lots we will need sealed surveys of the front yard setbacks of the improved lots.
7. If you are requesting a front yard variance for a lot located (1) between an improved lot and a vacant lot (2) between an improved lot and a street or (3) between a vacant lot and a street, we will need sealed surveys of the front yard setbacks of every improved lot within a specified distance (as determined by the Zoning District) in the same block and on the same street frontage.
8. The existing grade at the center of the foundation for the proposed structure and the residences on each side of the property (within 200 ft. for a corner lot)
9. The finished first floor height for the proposed residence and for the homes on each side of the property (within 200 ft. for a corner lot)
10. Name and address of property owner, address of project
11. Location and dimensions of parking areas and/or driveways
12. Identification of adjacent streets
13. A North arrow, identification of drawing scale, i.e., 1"=20'

BOARD OF ADJUSTMENT - SUBMITTAL SCHEDULE- 2016 - *Schedule is subject to change*

LAST DATE FOR SUBMITTAL*	BOARD OF ADJUSTMENT MEETING DATE**
December 18, 2015	January 11, 2016
January 15, 2016	February 8, 2016
February 19, 2016	March 14, 2016
March 14, 2016	April 11, 2016
April 11, 2016	May 9, 2016
May 16, 2016	June 13, 2016
June 13, 2016	July 11, 2016
July 11, 2016	August 8, 2016
August 15, 2016	September 12, 2016
September 12, 2016	October 10, 2016
October 17, 2016	November 14, 2016
November 14, 2016	December 12, 2016
December 12, 2016	January 9, 2017



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Email skling@jenkinskling.com

Admitted to Practice in
Missouri

October 6, 2016

Board of Adjustment
City of Kirkwood
139 South Kirkwood Road
Kirkwood, Missouri 63122

RE: *St. John Vianney High School - Pending Appeal and Additional Variance Request*

Dear Members of the Board of Adjustment:

This letter shall constitute the "hardship letter" requested by the City of Kirkwood (the "City") in connection with the request of St. John Vianney High School ("Vianney") for a variance from the strict application of lighting regulations (the "**Lighting Regulations**"). Vianney has been denied almost all beneficial use of its sports field lights in correspondence from the City and as part of the site plan review process. An appeal of the recent Planning & Zoning Commission decision on Vianney's site plan is being made simultaneously with this variance request.

There are no setbacks that will be violated. The variance relates to Section A-1040 of the Lighting Regulations and particularly Subsection 1040.5: (2), which places a maximum illumination level at the property lines adjacent to single family residential uses of less than or equal to 0.1 footcandles (fc) at finished grade. Section 1110.3 of the City's Zoning Code empowers the City's Board of Adjustment to grant area or non-use variances to vary or modify the application of any of the regulations or provisions of the Zoning Code where there are practical difficulties or unnecessary hardships in carrying out the strict letter of the Zoning Code.

Vianney has constructed its sports field lights in accordance with the City's building permit dated October 15, 2015 and photometric lighting plan submitted in connection therewith. The City's officials further instructed Vianney it could proceed to construct the lights and that no variance was needed. After the lights were completely constructed in accordance with the submitted lighting plan, the City sent a letter forbidding Vianney to use the lights due to non-compliance with the Lighting Regulations. Vianney filed an appeal of that decision on March 11, 2016 which is currently pending in front of this Board. Subsequently, the City required a site plan for the new lighting and improved sports field to be approved by its Planning & Zoning Commission in compliance with the 0.1 footcandle limitation of the City's Zoning Code to use the sports field. A plan was submitted utilizing only a small portion of the lights in compliance with the 0.1 footcandle limit, but such usage will not permit safe lighting for official competitive sports events. The Commission also imposed unreasonable, arbitrary, vague, and impractical limitations when lights can be used and limited almost all meaningful use of Vianney's sound system.

The specific variance requested by Vianney is to use the lights over the strict levels found in Section A-1040 in accordance with the original lighting plan. As part of its request, Vianney is willing to agree to the following limitations on use as a sports field usage mitigation plan to be included as part of the official variance approval:

Board of Adjustment
City of Kirkwood
October 6, 2016
Page 2

- a. During the periods of November 15 to March 14 and June 1 to August 31 of each calendar year, the lights shall not be turned on at any time;
- b. Lights shall not be turned on on any Sunday during the entire calendar year;
- c. During the periods of March 15 to May 31 and September 1 to November 14 of each year, the lights shall be completely turned off no later than 9:00 p.m., except: (i) one light standard shall be permitted to remain turned on for a reasonable time thereafter to allow for the safe exit of players and visitors, and (ii) Vianney shall be granted ten (10) exceptions during the period of use to extend the light usage until 10:00 p.m. in circumstances of a late start, inclement weather delay, or other unforeseen acts of God, unsafe conditions or unique situations;
- d. Use of the sound system shall comply with Section 17-36 of the City Code of Ordinances. The sound system shall not be used later than 9:00 p.m., except that Vianney shall be granted ten (10) exceptions during the period of use to extend the sound system usage until 10:00 p.m. in circumstances of a late start, inclement weather delay, or other unforeseen acts of God, unsafe conditions or unique situations. No music shall be played after 7:15 p.m., except that the National Anthem shall be permitted to be played on the sound system at the beginning of games commencing after such time;
- e. Vianney shall utilize a maximum of four (4) speakers (reduced from an available six (6) speakers);
- f. Vianney is willing to lower the location of the speakers on the poles on which they are mounted if requested by the City or neighboring property owners;
- g. Vianney shall use all reasonable efforts to encourage visitors not to park on neighboring streets located in the Geyer Forest, Forest Glen, and Oakshire Estates Subdivisions and not to utilize such subdivisions as a means to access the Vianney field; and
- h. For the few properties for which lighting at the property line exceeds 0.1 footcandles (fc) at finished grade, Vianney shall provide a one-time allowance of \$2,000.00 to provide for additional landscaping on the affected property owner's property, the type and placement of which shall be as reasonably requested by the Owner and for blinds, awnings and window treatments.

As this is a non-use variance request, the applicable standard is practical difficulties, not unnecessary hardship, if the strict letter of the Zoning Code is applied. The practical difficulties are as follows:

Board of Adjustment
City of Kirkwood
October 6, 2016
Page 3

1. Vianney cannot use the existing lights for any official competitive sporting events in conformance with recognized nationwide safety guidelines and requirements the new public address/audio system to safely light the fields without coming into direct conflict with Section A-1040.
2. Vianney constructed its sports field lights in good faith and on reliance upon a building permit issued by the building commissioner of the City and an email from the City informing Vianney it could proceed without a variance. Upon construction, Vianney further expanded its number of games, advertised the lighted fields, and advertised the expanded freshmen teams to potential students. The City has since claimed a mistake and has forbidden use of the lights as approved and constructed. This unique circumstance requires relief and will provide that substantial justice will be done as envisioned under Section 1110.3(3). Reliance upon a permit issued by mistake can constitute the basis for granting a variance. *Arens v. City of St. Louis*, 872 S.W.2d 631 (Mo. App. E.D. 1994); *Taylor v. Board of Zoning Adjustment of Blue Springs*, 738 S.W.2d 141 (Mo. App. W.D. 1987); *Stockwell v. Board of Zoning Adjustment of Kansas City*, 434 S.W.2d 785 (Mo. App. W.D. 1968).
3. The City's lighting ordinance limitation for maximum footcandles is unreasonable and excessively restrictive for typical sports field lighting use, and effectively prohibits all use of the sports field lights for official competitive sporting events, the reason for which they were built.
4. The City's lighting ordinance limitation for maximum footcandles is far too low to properly and safely light a sports field for regular games given a typical configuration next to a residential area both within and outside the City.
5. Vianney will suffer significant financial loss and the lighting system will be, in effect, inversely condemned. Vianney has spent \$235,000.00 in constructing the lights and will suffer further losses of revenue from expected fees for use of the sports fields by third parties.
6. Due to the topography, layout, and size of the school, the lighting standards cannot practically be relocated farther away from residential properties.

Moreover, as Vianney will demonstrate, only a very few properties are directly affected by the lighting exceeding the current Zoning Code maximum.

Vianney believes any one of the practical difficulties is sufficient to grant a variance and is prepared to make a presentation to the City's Board of Adjustment in this regard and with respect to the pending appeal request of the decision of the building commissioner filed on March 11, 2016 and the appeal of the site plan made in connection herewith.

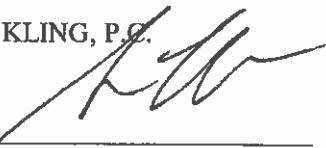
Board of Adjustment
City of Kirkwood
October 6, 2016
Page 4

Accordingly, Vianney requests the pending appeals and the variance request be placed together on the agenda of the City's Board of Adjustment as the submittals and information for all will be similar. Vianney is prepared to submit testimony and exhibits in connection with this variance request at a hearing duly called.

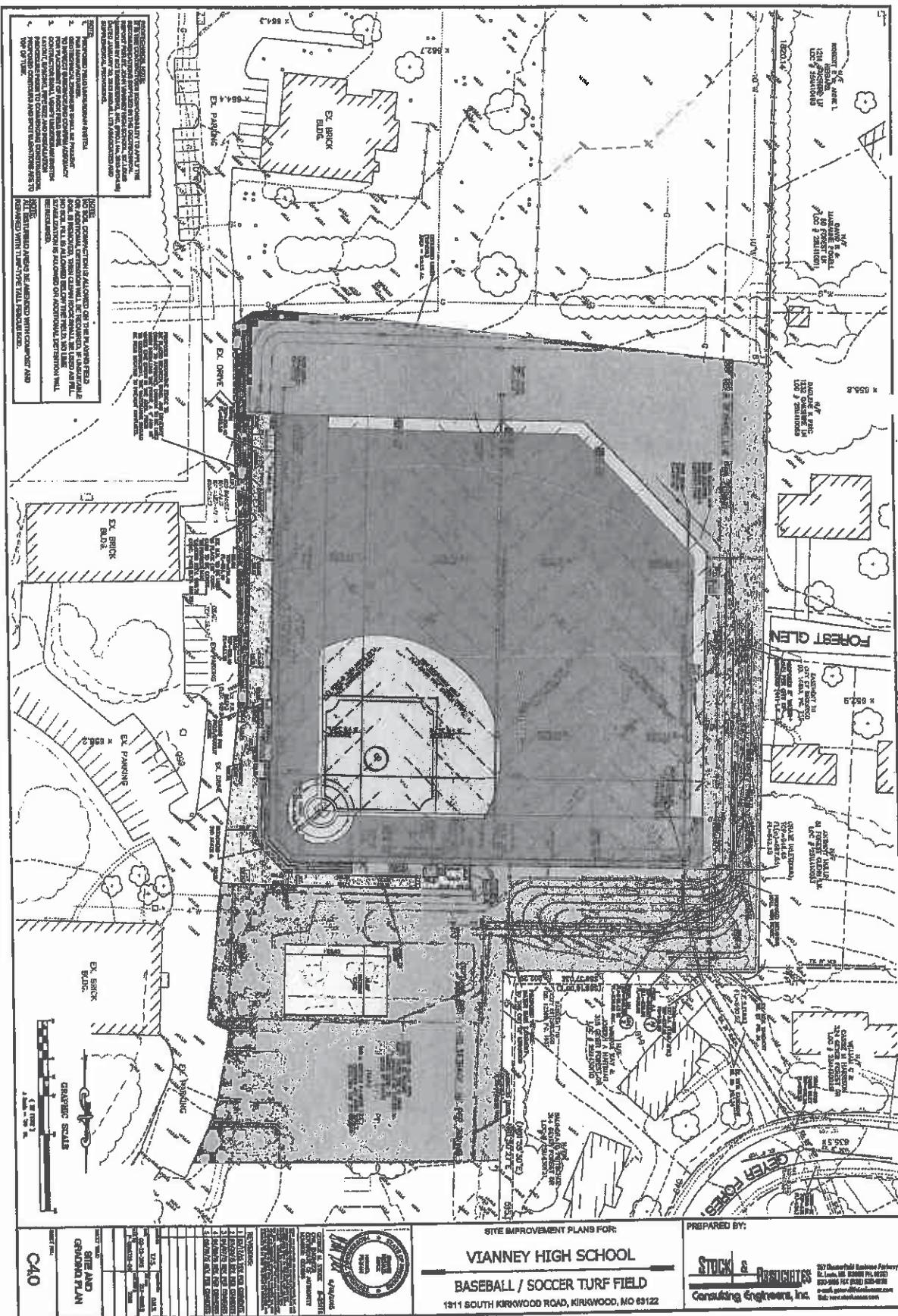
Sincerely,

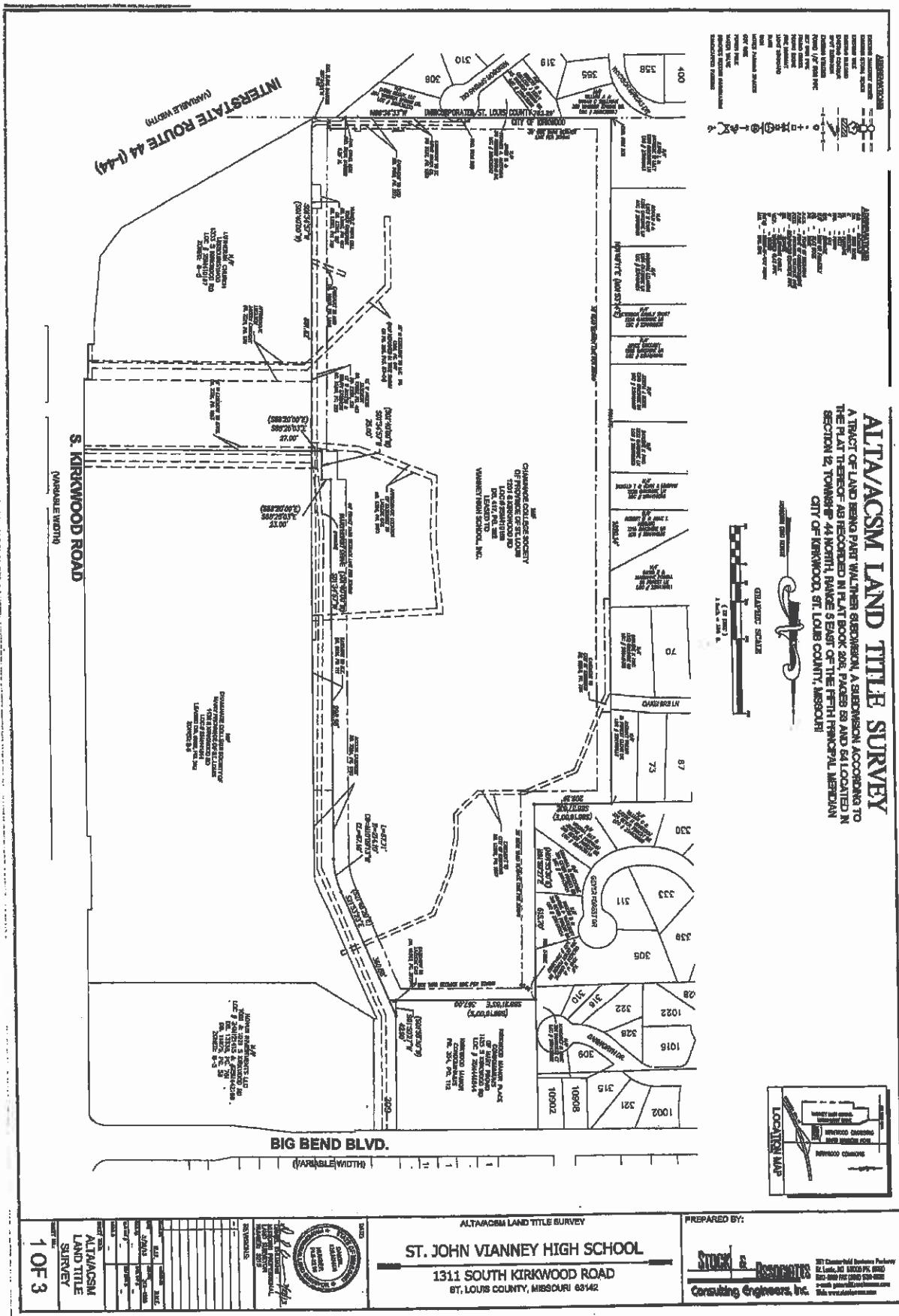
JENKINS & KLING, P.C.

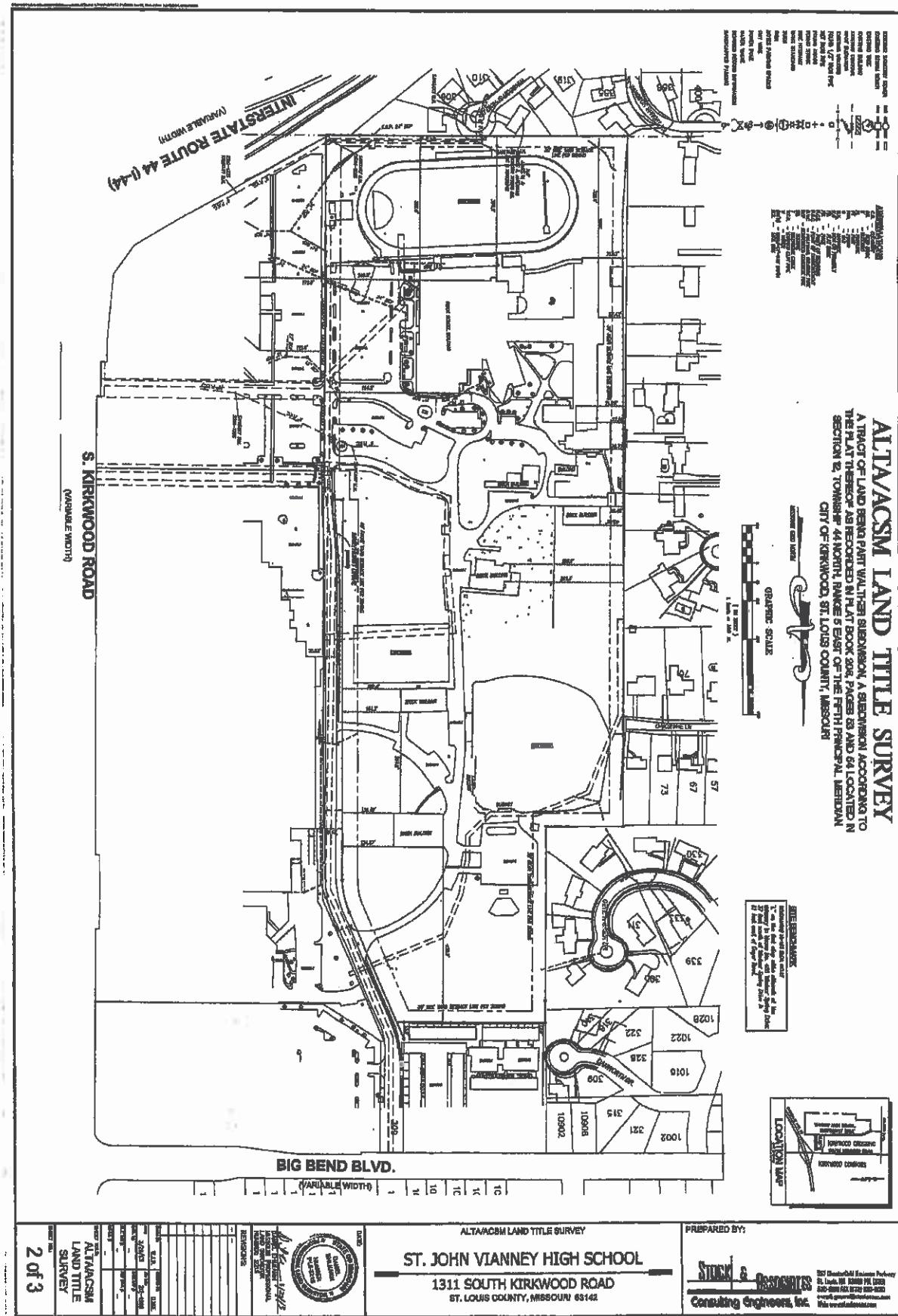
By: _____


Stephen L. Kling, Jr.

SLK/mcb







Project Submittal Approval

August 11, 2015

Mike Loyet
St John Vianney High School
1311 South Kirkwood Road
Saint Louis, MO 63122

RE: Saint John Vianney High School
Project #171842

Dear Mr. Mike Loyet,

This letter is to serve as our request for approval of submittals for production provided by Musco Sports Lighting, LLC. Please review the enclosed documents for accuracy and note changes where appropriate. Upon your approval, we can begin custom fabrication of the materials for your project.

The following items need verified prior to beginning the manufacturing process:

- Pole locations as shown on equipment layout or scans

We shall deliver equipment to the job site 4 - 6 weeks, after submittal approval or release of order.

Please indicate your approval of these submittals in their entirety by signing below.

Authorized Signature

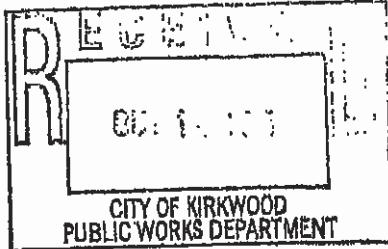
Date

Printed Name

Company Name

Please return one copy of this form to:

MUSCO SPORTS LIGHTING, LLC.
Attn: Matt Stranberg
2107 Stewart Road
Muscatine, Iowa 52761
Phone: 800-756-1205
Fax: 800-374-6402



**MUSCO LIGHTING SUBMITTAL FOR PRODUCTION
PREPARED FOR:**

Saint John Vianney High School

**Baseball Lighting Project
Saint Louis, MO
August 11, 2015**

Project #171842

Submitted by:

Musco Sports Lighting, LLC

2107 Stewart Road
Muscatine, Iowa 52761
Local Phone: 563-263-2281
Toll Free: 800-756-1205
Fax: 800-374-6402



Project Submittal, Table of Contents

A. BILL OF MATERIALS

B. LIGHTING DESIGN

Computer Model - Light Level Scans
Drawing # 171842-D, dated 14-Jul-15

C. LIGHTING CONTACTOR CABINETS

System Summary - Drawing # 171842P1V1-0811110903, dated 11-Aug-15

D. STRUCTURAL INFORMATION

Drawing # 171842

E. WARRANTY

Musco 10/2 Warranty

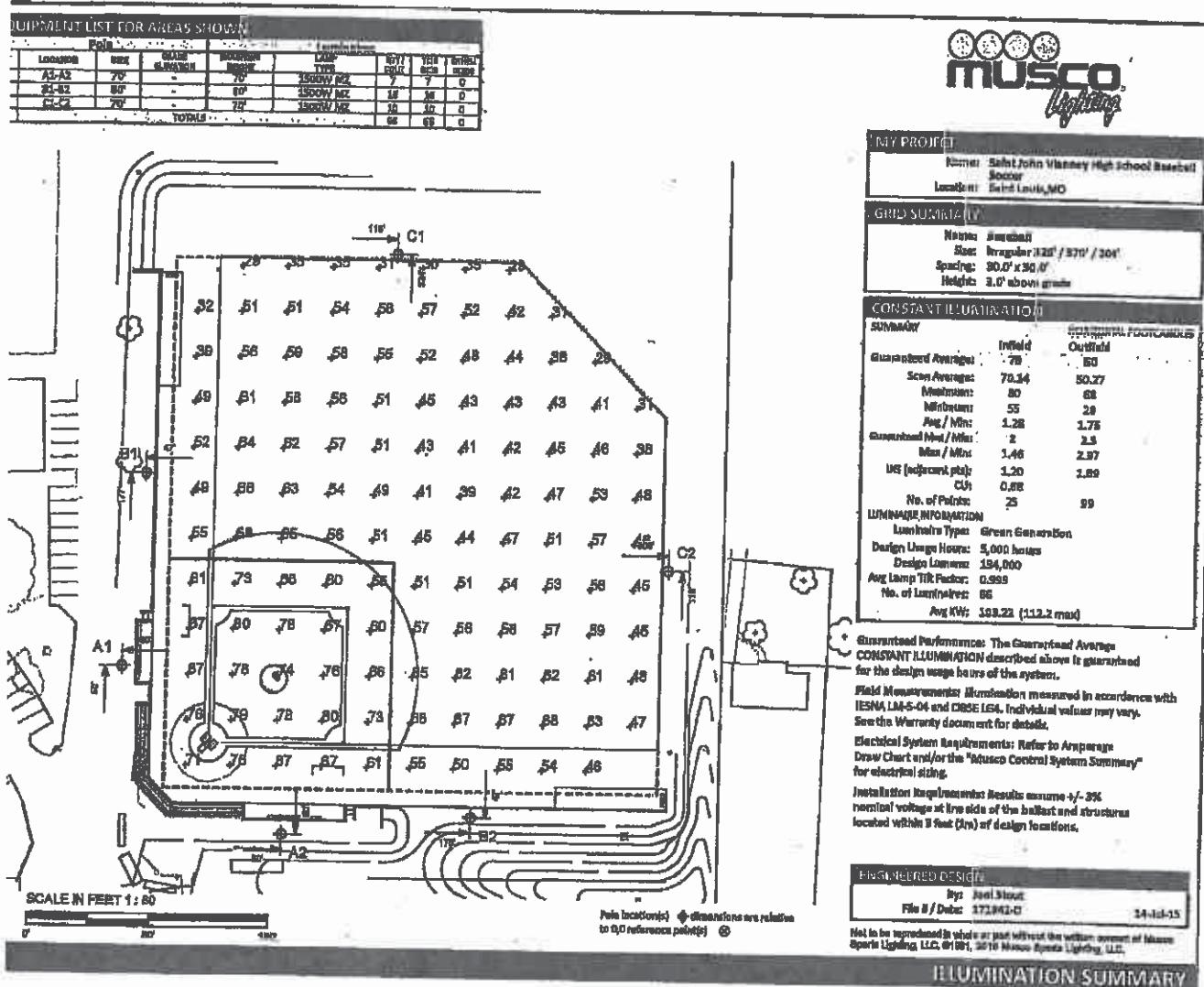
F. PRODUCT INFORMATION

Pole Configuration Drawings
Light-Structure Green Component Drawings
Lighting Contactor Cabinet Datasheet
Smart Lamp 1500W_60Hz Datasheet
UL Letter

B. LIGHTING DESIGN

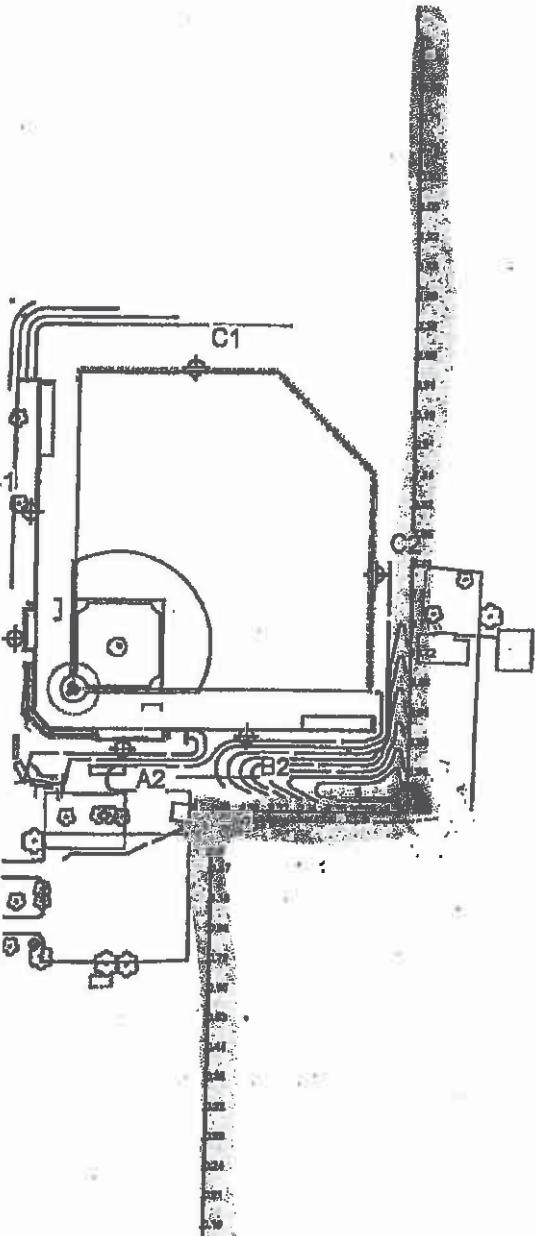
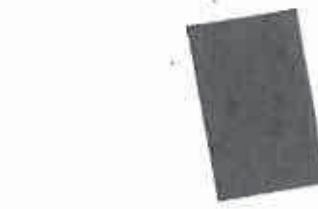


Saint John Vianney High School, 171842



17SL-CC00078

Luminaires				
LAMP TYPE	QTY	POLE	TRMS GND	OTHER GND
100W MZ	7	7	0	
200W MZ	15	16	0	
300W MZ	10	10	0	
	66	66	0	



MY PROJECT

Name: Saint John Vianney High School Soccer
Location: Saint Louis, MO

GRID SUMMARY

Name: Property Line Spill
Spacing: 30.0'
Height: 3.0' above grade

CONSTANT ILLUMINATION

SUMMARY	MAX VERTICAL FOOTCAN
Scan Average:	2.5890
Maximum:	10.72
Minimum:	0.14
No. of Points:	53
LUMINAIRE INFORMATION	
Luminaire Type:	Green Generation
Design Usage Hours:	5,000 hours
Design Lumens:	134,000
Avg Lamp Tilt Factor:	0.999
No. of Luminaires:	66
Avg KW:	103.22 (112.2 max)

Guaranteed Performance: The CONSTANT ILLUMINATION described above is guaranteed for the design usage hours of the system.

Field Measurements: Illumination measured in accordance with IESNA LM-5-04 and CIBSE LG4. Individual values may vary. See the Warranty document for details.

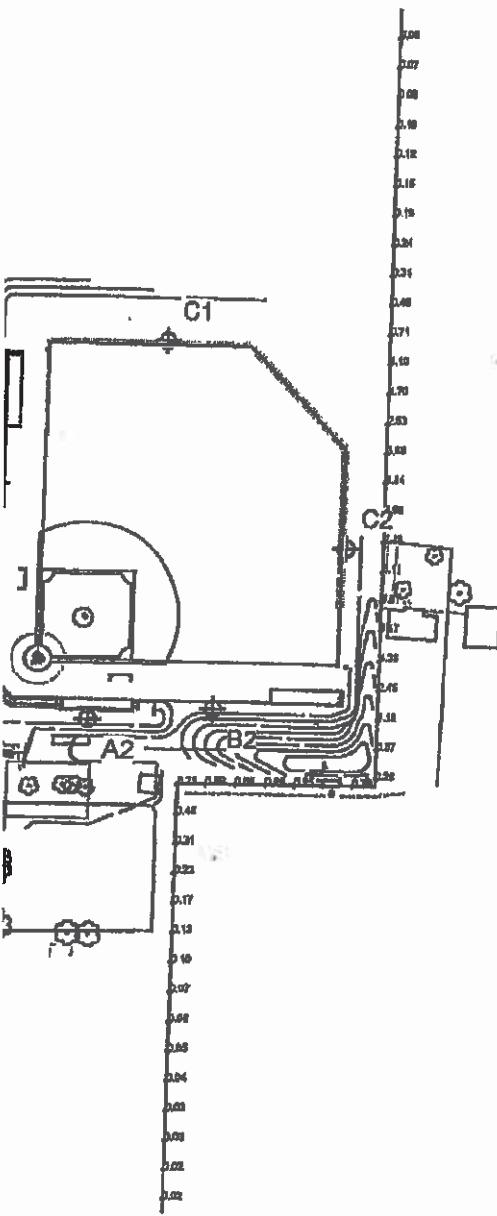
Electrical System Requirements: Refer to Amperage Draw Chart and/or the "Musco Control System Summary" for electrical sizing.

Installation Requirements: Results assume +/- 3% nominal voltage at line side of the ballast and structures located within 3 feet (1m) of design locations.

ENGINEERED DESIGN

By: Joel Stout

Luminaires			
	QTY / POLES	THIS GRID	OTHER GRIDS
Y MZ	7	7	0
/ MZ	16	16	0
/ MZ	10	10	0
	66	66	0



Pole location(s) dimensions are relative to 0,0 reference point(s)



MY PROJECT

Name: Saint John Vianney High School Baseball
Location: Saint Louis, MO

GRID SUMMARY

Name: Property Line Spill
Spacing: 30.0'
Height: 3.0' above grade

CONSTANT ILLUMINATION

SUMMARY	HORIZONTAL FOOTCANDLES
---------	------------------------

Entire Grid

Scan Average: 0.9750
Maximum: 5.17
Minimum: 0.01

LUMINAIRE INFORMATION

Luminaire Type: Green Generation
Design Usage Hours: 5,000 hours
Design Lumens: 134,000
Avg Lamp Tilt Factor: 0.999
No. of Luminaires: 66
Avg KW: 103.22 (112.2 max)

Guaranteed Performance: The CONSTANT ILLUMINATION described above is guaranteed for the design usage hours of the system.

Field Measurements: Illumination measured in accordance with IESNA LM-5-04 and CIBSE LG4. Individual values may vary. See the Warranty document for details.

Electrical System Requirements: Refer to Amperage Draw Chart and/or the "Musco Control System Summary" for electrical sizing.

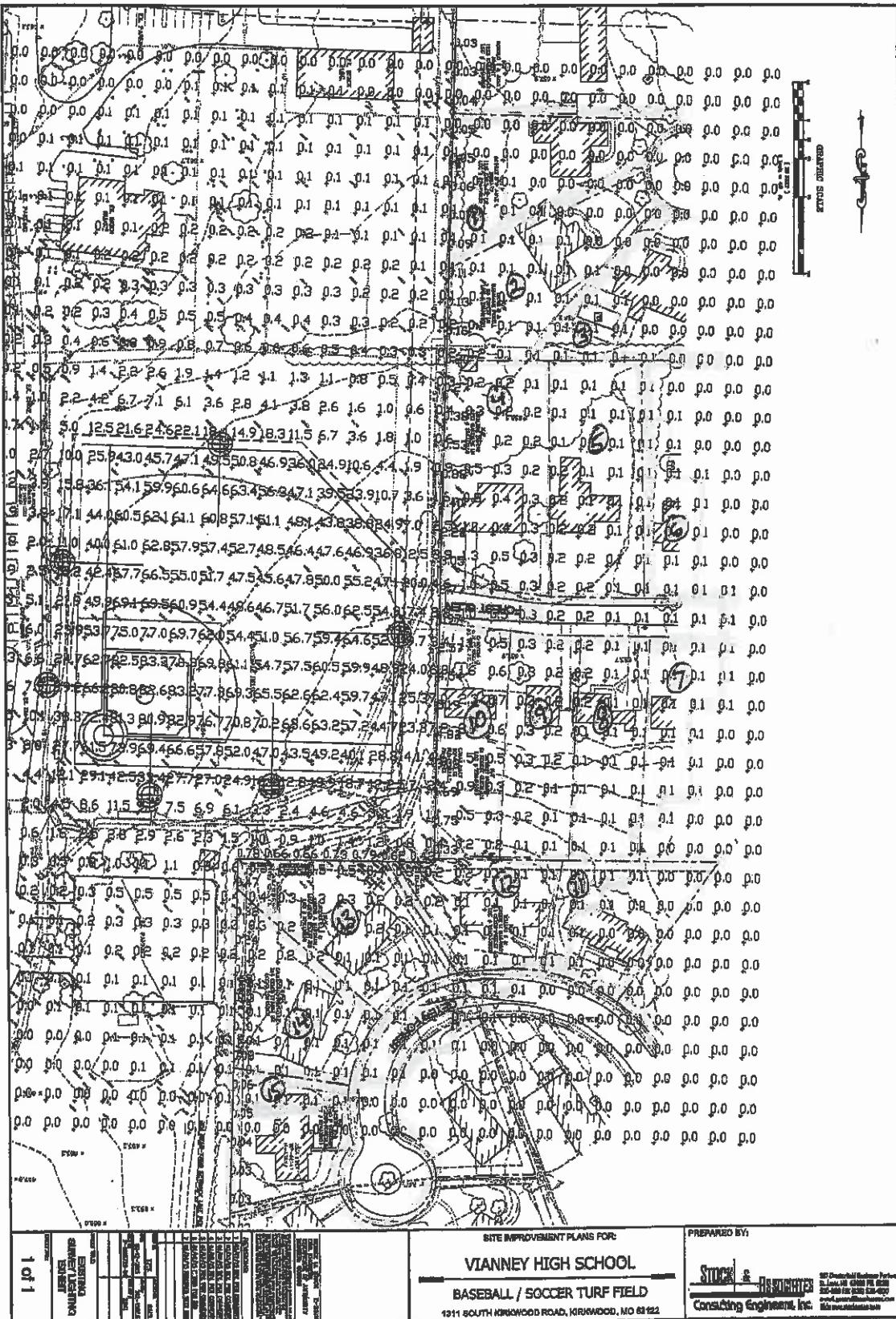
Installation Requirements: Results assume +/- 3% nominal voltage at line side of the ballast and structures located within 3 feet (1m) of design locations.

ENGINEERED DESIGN

By: Joel Stout
File # / Date: 171842-D

14-Jul-15

Not to be reproduced in whole or part without the written consent of Musco
Route 1, P.O. Box 1100 • Monroe, NC 28110 • 800.544.6888



My Friend - St. Louis County - January 03, 2017 - 05:13 PM
normie plan tor vanner usgeball review

Stephen L. Kling, Jr.
Email skling@jenkinskling.com



Admitted to Practice in
Missouri

October 6, 2016

RECEIPT

October 6, 2016

Received of Jenkins & Kling, P.C. one (1) Board of Adjustment Variance Application and check in the amount of \$500.00 for the non-refundable filing fee filed on behalf of St. John Vianney High School. The following submittals were enclosed with such application:

- Twelve (12) copies of Vianney's hardship letter;
- Twelve (12) copies of the sports field site plan;
- Twelve (12) copies of an ALTA/ACSM land title survey;
- Twelve (12) copies of the lighting plan submitted to the City on or about early October 2015;
- Twelve (12) copies of an existing survey lighting exhibit; and
- Twelve (12) copies of a photometric plan relating to the sports field lighting.

City of Kirkwood

By:  10/6/16
Print Name: Jonathan D. Roche
Title: City Planner

JENKINS & KLING, P.C.

DATE : Oct/ 5/2016

CHE # : 39586

AMOUNT : \$500.00

ACCOUNT: GENERAL - 1

PAID TO: City of Kirkwood

39586

City of Kirkwood - Variance Fee

CLIENT: 3654 - Vianney High School

MATTER: 3654-001